MR. K. R. ELENKATH (*Kalkulam I*): Sir, I move that the third reading of the Bill be postponed to the next session of the Assembly.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I rise to a point of order. A motion for adjournment cannot specify a particular day for the postponed business.

MR. E. V. KRISHNA PILLAI (*Pattanamtitta*): Is the motion moved by the Law Member before the House, Sir?

PRESIDENT: Moved and seconded that the third reading of the Bill be taken up at once.

Those who are in favour of the motion, please show their assent.

The motion was put to vote and lost.

THE TRAVANCORE LUNACY BILL.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) I beg to present the Report of the Select Committee on the Travancore Lunacy Bill and move that the Bill as reported be taken up for consideration.

MR. R. M. STATHAM (*Director of Public Instruction*): I second it.

Clause 1.

PRESIDENT: As there is no amendment to clause 1, I take it, the House agrees to the clause being added to the Bill.

Clause 1 was added to the Bill.

Clause 2.

MR PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): I beg to move the amendment that :

The word 'or' occurring in sub-clause 1, line 1, be deleted and the word 'and' put in.

I wish to offer a few words by way of explanation why this amendment is necessary. Before I am able to convince the House as to what exactly is indicated by this amendment I have to state some facts relating to the general principles involved in the Bill.

MR. S. CHATTANATHA KARAYALAR (*Shencotta*): The word 'or' occurs twice. May I know to which 'or' the member refers?

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): I refer to the second 'or'. In case the first amendment is not carried, I wish to move the second amendment in order that the words "or declared to be such," may be deleted and the section may be deprived of all the evils which it otherwise would have. It is stated in the Objects and Reasons that this Bill has been drafted on the lines of Act IV, 1912, the British Indian Lunacy Act. Further, it says that the Lunacy Regulation which is in existence at present is found to be insufficient. On referring to the corresponding clause in the British Indian Act, in the place of this phrase that we find here, "or declared to be such" we find the expression "or licensed by". My impression is that this expression "or declared to be such" in the present Bill is intended to be the substitute

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for the other expression found in the British Indian Enactment. Under the scheme of the British Indian Enactment it is not only Government hospitals or asylums that are to receive lunatics so found. Government have reserved to themselves the power to issue licenses to private hospitals and authorise them to receive lunatics into their institutions. If that is the object with which this phrase is sought to be retained here my submission is that it ought not to be permitted mainly for two reasons.

In the British Indian Enactment which contemplates cases of private institutions being licensed to take lunatics, there are three important clauses enacted in that Act. The first relates to the liability on the part of the private institutions not only to establish and maintain an asylum for lunatics but to maintain a mental hospital for lunatics. The distinction will be clear. An asylum is defined to be an asylum for lunatics or a mental hospital for lunatics. So much so it may be only an asylum for lunatics and it need not be a mental hospital for lunatics. An asylum may be a mental hospital in which case it is a mental hospital for lunatics. Therefore when the British Indian Act was passed they thought it fit to introduce in the Bill a clause making it a condition precedent to the issue of licenses to private institutions that they shall maintain a mental hospital. It ought not to be a mere asylum for lunatics but ought to be a mental hospital. It also confers upon Government power to revoke that license under certain circumstances. The third reasons is this. The Government is authorised to issue reception orders to Government asylums or licensed asylums. Those in charge are then bound to receive the lunatics. It is the duty of the State to take care of its lunatic subjects. Lunatics ought to be taken charge of by the State to prevent them from doing harm not only to themselves, but to the other members of the society. It therefore becomes the duty of Government to maintain them during the time they are in their custody. In the case of lunatics who are possessed of means to maintain themselves, provision is made enabling Government to recoup themselves from such property. In the case of pauper lunatics the cost of maintenance is to be met from the general revenues. When the law says that a lunatic, whether pauper or not, shall be received by a licensed asylum, provision must be made directing Government to compensate them for the cost incurred for maintaining them. The British Indian Act makes provision for this.

These are some of the provisions which find a place in the British Indian Enactment and which have been calculated to enable the Government to issue licenses. One is making it legally obligatory for the Government to contribute towards the maintenance of the lunatics received in private lunatic asylums. The importance of this I have already explained. The other is making it obligatory for the private institution to carry on a curative treatment of the lunatics, which can be done only in a mental hospital. It is not enough if they maintain an asylum. If I put up a building and say that I will afford conveniences for making it an asylum, Government may have to make a

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declaration. I need not have in it a mental hospital. I am not legally bound to have a course of curative treatment carried on there. Then what happens is this. One can put up a large number of sheds suitable for the detention of lunatics and make a profit out of it without undergoing any corresponding inconveniences or expenses attending the establishment of a mental hospital. The statutory power of declaration must be restricted to cases where mental hospitals, as distinct from asylums, are established. Again the power for a declaration must have a corresponding power to wipe out the effect of the declaration whenever there is a necessitty for it. This power must be as express and clear as the other. Otherwise after making declaration Government will find themselves incompetent to undo the mischief that they might have done. In British India if the conditions of the license are not satisfactorily complied with or if no curative treatment is carried on on proper lines Government can cancel the license and deal with the matter in a way they deem best. Statutory provision is made for this. Under the general law a license is liable to be cancelled if the licensee does not conform to the conditions. In spite of this, the British Indian Legislature thought that express provision was necessary.

Now this small word 'or' in this clause without the inconvenient long clauses relating to the three matters above indicated, has created great difficulties. I therefore thought that if Government who are responsible for the drafting of this Bill did not want any of the inconveniences of the British Indian Act, they should not enjoy the unrestricted convenience arising from this small word 'or'. The effect of the amendment would be that Government alone shall establish lunatic asylums and they shall declare them to be such.

The House rose for lunch at 1-7 P. M. and re-assembled at 2-2 P. M., the Deputy President presiding.

NEW MEMBER SWORN IN.

DEPUTY PRESIDENT: The Secretary to the Assembly called out the name of Mr. N. K. Padmanabha Pillai to take the oath. I wish to say this. I do not see it in the agenda, and, so far as the rules go, the taking of oath must precede every other business in the House in the morning. I wish to hear from the Law Member how the precedents stand.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): So far as precedents are concerned, I think there has been an instance, in the last session. It was, I believe, Mr. Thiravium Nadar who took the oath in the afternoon. It is only a small business and it is left to the discretion of the Chair to allow half a minute for it.

DEPUTY PRESIDENT: Not that I am unwilling to allow the time required for it. But I do not want to use my discretion. if the precedents are so strong that I am bound to follow them.

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MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : It is in the agenda.

DEPUTY PRESIDENT : That is taking of the oath in the morning.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : Yes.

DEPUTY PRESIDENT : But is there any well-defined practice in this House as regards the taking of oath in the afternoon ?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : Yes.

DEPUTY PRESIDENT : As I understand from the Law Member that there is a clear and well-defined practice, for the time being, I propose to follow that practice. Mr. Padmanabha Pillai may take the oath.

Mr. N. K. Padmanabha Pillai then took the oath and signed the Rolls.

THE TRAVANCORE LUNACY BILL—(*contd.*)

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*) : Sir, to elucidate my point I wish to read some of the relevant sections of the corresponding British Indian Enactment. Section 3 clause (1) says :

"Asylum means an asylum or mental hospital for lunatics established or licensed by Government."

Sections 84, 84 A and 86 are the three sections dealing with the licensing of private asylums, that have been significantly omitted by the Law Member from this Bill.

Those sections are dealt with in a separate Chapter, Chapter VI —Establishment of asylums.

Section 84 reads :

"The Local Government may establish or license the establishment of asylums in such cases as it thinks fit, if it is satisfied that provision has been or will be made for the treatment therein of persons suffering from mental diseases."

Section 84 A reads —

"If in any licensed asylum no provision for curative treatment has been made, or the Local Government consider that the provision made is insufficient, the Local Government may require the person in charge of the asylum to take such measures for making or supplementing such provision as it may deem necessary, and, if such person does not comply with the requisition within a reasonable time, the Local Government may revoke the license."

Section 85 is not relevant and has been rightly omitted from our Bill.

Then the next relevant section is section 86.

DEPUTY PRESIDENT : I wish to make one point clear. You seem to refer to the British Indian Act rather elaborately and you are pointing out what sections of the British Indian Act have been ommitted and so forth. It is not stated that this Bill is drafted exactly on the same lines and in the same manner as the British Indian Enactment. No doubt, that might have been used. So, any elaborate observation of what the British Indian law is may be avoided. Reference may certainly be made whenever necessary.

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MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): Sir, in the Statement of Objects and Reasons declared in the Bill as it was originally introduced, I find the following :

> "In regard to the care of the person and the management of the estates of lunatics by taking proceedings through the District Court, there is some provision in the existing Regulation, but they are not perhaps ample. In British India, the law now in force is the Indian Lunacy Act 1912, IV of 1912, with subsequent amendments. It is considered that a law *on the lines of that Act* will be beneficial to Travancore also. The Bill has accordingly been prepared *on the lines of* the British Indian Act."

DEPUTY PRESIDENT : I want to make a correction. "On the lines of the British Indian Act" does not mean that everything has been taken from there. It is only the spirit of the law that is taken. That is why I said you may refer to the British Indian law but not elaborately.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): Sir, there are altogether 72 clauses in the Bill. All the 72 find a place in the British Indian Enactment and they have been faithfully copied from the British Indian Enactment with some amendments here and there, a change of a word or a small phrase. This is a case in which the spirit of the law has not been followed. Section 86 reads thus :

> " When any lunatic is admitted to a licensed asylum under a reception order or an order under section 251 and no engagement has been taken from the friends or relatives of the lunatic or order made by the Court for the payment of expenses under the provisions of this. Act, the cost of maintenance of such lunatic, shall, subject to the provisions of any law for the time being in force, be paid by the Government to the person in charge of such asylum."

Sub-section 2 of the section is relevant.

These are the relevant sections which have been incorporated in the British Indian Act as safeguards against improper exercise of the power to license. Under the British Indian Act power is given to Government to issue license to private institutions, but the Government can do so only under restricted conditions. Those conditions are laid down in the two sections 84 and 84 A that I referred to. And for the corresponding liability to meet the charges of lunatics sent over there is the provision in section 86. If the learned Law Member who drafted the definition of the word 'Asylum' in this Bill thought that he was thereby conferring upon Government the power not only to establish asylums but also to declare any institution not established by Government but established by others as a lunatic asylum, my humble submission is that that power can be conferred upon Government only with the necessary safeguards similar, at least, to those found in British India.

I have always been opposed to the policy of conferring upon Government unlimited powers for extending the scope of the provisions of a statute. I have always found that in British India some restriction is placed upon Government in the exercise of any general power conferred upon them by statute. This Bill which is drafted on the lines of the British Indian Enactment, I think, must also conform to those provisions. Otherwise, here is a large power conferred upon Government to declare any place as a lunatic asylum, and that without any of

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[Mr. Puthupalli S. Krishna Pillai.]

the necessary safeguards. I was under the impression, Sir, when I first read this Bill, that it might not contain the full implications which I have now sought to place upon the words under discussion that it after all meant only a lunatic asylum established by Government and declared to be such. But on a comparison of this Bill with the British Indian Act I found that that was not the case. Even though there are 72 clauses in the Bill, there is not a single clause in which a safeguard provision as is made. At the end of the Bill, in Schedule 1, form 5, I find the expression 'sent to an asylum not being an asylum established by Government' so that, this Bill clearly contemplates asylums established by Government and asylums not established by Government but declared to be asylums for the purposes of this Regulation. Therefore, there cannot be any doubt that this Bill, as it stands, contemplates two kinds of asylums, one established by Government and the other not established by Government but declared to be such by Government in exercise of the power conferred upon them.

To elucidate my position still further, Sir, I would refer you to the Lunatic Asylum Regulation, I of 1080, and the definition therein contained of the word 'Asylum'. Section 3 says: "Our Dewan may, without previous sanction, by Notification in the official Gazette, appoint any place as a lunatic asylum for the purpose of this Regulation and specify the local area from which lunatics may be sent to such asylums."

This clearly contemplates an appointment of a place by Government and a Gazette Notification of such appointments, which is substantially the implication contained in my amendment.

DEPUTY PRESIDENT: Is it stated there that the Government can declare only Government institutions as lunatic asylums?

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): The word appoint clearly indicates it. At any rate I am quite certain that private property of others is not sought to be affected thereby. It is in pursuance of this that the Olampara Hospital has been declared to be a lunatic asylum for the purpose of the Regulation.

Whatever that may be the distinction is made here between lunatic asylums established by Government and those not established by Government but declared to be such by Government. That will clearly show that the Bill deals with two different sets of hospitals one established by Government and the other not established by Government, and in regard to those not established by Government, I would suggest, Sir, that there should be some safeguards. The safeguards embodied in the British Indian Enactment are omitted from this Bill. All three safeguards are taken away. Therefore it is, that I brought forward this amendment. It is not enough if Government establish an asylum, but they must also declare it to be an asylum, so as to notify the public what place they have to look to either for detaining a lunatic or to ascertain where he has been detained, etc.

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Therefore it is not enough for Government to establish an asylam. It must also be declared as such.

There is another object also. As I said it is not enough if an asylum alone is established so far as the private persons are concerned. It must be a mental hospital also. Under the provisions of the Bill any place may be declared to be an asylum.

DEPUTY PRESIDENT: Asylum as such connotes a place for treatment.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): Yes, I thought of that matter but when I look into the definition of asylum for the purpose of the Lunacy Regulation I find that an asylum is an asylum for lunatics or a mental hospital for lunatics. An asylum for lunatics is a place of refuge so far as the lunatics are concerned. The object of that, Sir, is founded on the well-known principle that the State must take care of the lunatics. Some of them are dangerous and others are non-dangerous. Public interest requires that they should be taken care of by the State. But Government could not be compelled to give them medical treatment. So far as they are concerned all that Government are obliged to do is to give them an asylum or a place of refuge. It is therefore that this definition has been drafted as it is. Asylum is an asylum for lunatics or mental hospital for lunatics. In the case of private individuals it must be not only an asylum but also a mental hospital. Therefore I submit to the House that this amendment may be accepted.

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): I have very great pleasure in seconding this amendment. Various objections have been pointed out very clearly by the mover of the amendment to the existing clause. But I know and I anticipate that the answer will be that Government will make enough room to safeguard these things and that they will make a declaration only under certain circumstances. By that every difficulty anticipated by the mover will be circumbrated. That may be one answer. It will be argued that we will have to put some trust on Government authority and that we will have to put some faith on Government so that we cannot imagine that Government will do anything wrong without taking proper care. But I wish to warn the House against such an argument, because now we are enacting these provisions and we should leave as little chances as possible to the tender mercies of the Government in the matter of making rules by the rule-making authorities. Executive authorities everywhere nullify the power of legislature. The legislature should take very great care not to give scope for the exercise of such power. So that we will be well-advised in making very definite and clear provisions. With these words I support the amendment.

DEPUTY PRESIDENT: In the case of institutions established by Government you are prepared to accept the rules framed by Government?

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MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): In cases of institutions established by Government this House has the opportunity of supervising the work and calling the attention of Government for inadequecy of provisions and other defects. But it will be a far different thing with regard to institutions declared to be such by Government. I think the whole implications of that have been very ably dealt with by Mr. Krishna Pillai and therefore I do not deal with them.

DEPUTY PRESIDENT: So that you think that there is a presumption of greater efficiency in Government institutions than in private institutions?

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): Yes, there is. But that is not the point. I accept that because we have got greater opportunities of control over Government institutions. That is the reason on which I put it. And we cannot do away with these very necessary Government institutions.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I have very great pleasure to support the amendment and in doing so I would add one or two words. If under this Regulation we give power to Government for exercising their own discretion we will have the same experience as in the case of the aided schools which are run merely for the benefit of the private individuals without sufficient control of Government over them. So it is dangerous to accept this principle.

MR. E. V. KRISHNA PILLAI (*Pattanamtitta*): Sir, I wish to oppose the amendment. The amendment, if it is accepted, would read like this — "asylum means an asylum or mental hospital for lunatics established and declared to be such, by Our Government." With regard to the observations made by the seconder the question put from the Chair is the question that now comes up for consideration.

DEPUTY PRESIDENT: That question does not come in for consideration now.

MR. E. V. KRISHNA PILLAI (*Pattanamtitta*): Accidentally it strikes me as a very sensible question.

DEPUTY PRESIDENT: You must withdraw that. You should not say anything about the merit of the question. You may comment upon the iformation given by the member.

MR. E. V. KRISHNA PILLAI (*Pattanamtitta*): Then the question is whether the non-officials would have greater faith in institutions established by Government than in institutions declared to be such by the Government. The amendment, if accepted, would mean that there is greater justification in putting more faith on Governmental institutions than on institutions conducted by private individuals recognised by the Government. It is as well open to the Government to put up a building and then appoint somebody with inferior qualifications for supervision, medical aid, or something like that and then declare that it is an institution established by Government and as

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such that institution ought to be accepted as the one which comes under the provisions of this Regulation. This House is competent to criticise the efficiency observed in regard to the staffing of institutions not only those established by Government but also those for which aid is given by them. Certainly there is absolutely no rule or law preventing any discussion on the floor of this House or of any other representative institution, and criticisms of institutions declared as asylums or mental hospitals in the same degree as Government institutions.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): Will this House be called upon to vote for the expenditure of private institutions?

MR. E. V. KRISHNA PILLAI (*Pattanamtitta*): Certainly upon the grant part of which goes in aid of private institutions.

DEPUTY PRESIDENT: The competency of this House is a matter of law, and therefore need not be dealt with.

MR. E. V. KRISHNA PILLAI (*Pattanamtitta*): So, my own impression is that in the way in which we are competent to criticise the working of the Governmental institutions we can criticise institutions receiving any sort of assistance or help from the Government. Whether the Government contemplate giving grants either in the shape of money or not to institutions of the kind has not to be taken into consideration here. Therefore my submission is that even if this amendment is accepted we do not make very much improvement upon the spirit of the provisions contained in the Bill. The mover of the amendment referred to certain provisions in the British Indian Act and the circumstances under which Government can declare an asylum or an institution of that kind and he went on to say that he is not prepared to accept any provision investing the Government with such powers without the necessary safeguards. Anyway the licensing power is conferred on the Government and there is absolutely no safeguard respecting the discretion of the Government in the matter of issuing licenses.

DEPUTY PRESIDENT: I don't think that that was the argument of Mr. Krishna Pillai. What he said was that in British India it is obligatory on the part of the Government to provide certain sums towards those institutions. Here under this Bill there is no such thing. That is the position.

MR. E. V. KRISHNA PILLAI (*Pattanamtitta*): Even if it is so, the discretion of the Government is not fettered under the British Indian Act. In the place of that, here we have got section 63 (*b*) where it is declared —

"Our Government may make rules for any of the following purposes, *viz.*:—
(*b*) prescribe places of detention and regulate the care and treatment of persons detained and the removal of persons detained from one asylum to anothers

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[Mr. E. V. Krishna Pillai.]

There is also the penalty clause contained in section 65. It is therefore a power which is conferred upon the Government which would be specified in detail in the rules that would be framed under the regulation. And there is also another body called into existence under the provisions of this Regulation to supervise the working of these institutions and to see whether they conform to the rules prescribed by Government, for, in section 22 we see the visitors being allowed the power of inspecting and seeing whether the conditions specified under the Regulation by Government in regard to the care and treatment of lunatics are conformed to by those in charge of the institution. Somehow or other we have to trust to the good sense of the Government in the matter of establishing an institution or in the matter of declaring a private institution as an asylum or mental hospital. That is a conclusion from which we cannot escape and, my submission is, even if this amendment is accepted that stares in the face and we are in no way better than we are under the provisions of this Regulation even if this amendment is accepted. In-as-much as there is no provision imposing upon the Government any stringent conditions under which only they could declare an institution or establish an institution for the sake of lunatics this amendment would not carry us far even if we accept this. Therefore I oppose it.

MR. EDAVANATT S. PADMANABHA MENON (*Shertala I*): Sir, I support the amendment moved by Mr. Krishna Pillai. I too feel that the amendment is necessary because if the declaring power is vested in the Government it is likely that private agencies and other institutions may avail of these conditions to have a mental hospital or a lunatic asylum established and if that is allowed there is always the likelihood and without fulfilling truly all the conditions that are necessary for an up-to-date asylum, it may be abused as a kind of patronage or profit-making agency. Taking the other broad aspects also into consideration, we may require, at the most, only three or more lunatic asylums for the whole State in district centres and the Government can easily run these as departmental ones. If these three or four institutions are run in important centres by the State itself under the supervision of the Darbar Physician, it will be more conducive to the efficiency and this House will have greater control over its management at least once in a year during the budget discussion.

As Honourable members will be pleased to see, this piece of legislation has been brought before us by the Law Member after nearly 30 years. The existing Regulation itself was passed in 1080. In all advanced countries, especially in Europe up-to-date innovations are being made in the treatment of the unfortunate citizens such as idiots, lunatics and persons who are suffering from physical defects. If these institutions are run by the Government under the Medical Department, it will be easier to introduce new methods and thus keep in a line with similar institutions elsewhere.

MR. E. V. KRISHNA PILLAI (*Pattanamtitta*): As it is, if a charitable concern comes forward and offers to establish an institution on the

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model contemplated by the Government, is it the member's suggestion that permission should be refused?

MR. EDAVANATT S. PADMANABHA MENON (*Shertala I*): Sir, I have very little faith in the so-called charitable institutions that are being worked in our State now. If there are very decent charitable institutions there are very large spheres of useful work open to them than to confine their work in this particular field. Here it is a piece of legislation affecting the liberties of citizens and this power is given to Government. Every modern Government deems it a duty to take up this kind of legislation because the lunatics form a separate category among the citizens and because of imperfections or defects in their mental powers it is only fair that that treatment should be given and if proper treatment is given to them it is necessary that they should be under the Medical Department. That may be more conducive to efficiency and there will be lesser scope for the powers being abused.

DEPUTY PRESIDENT: Do you say that in civilized countries the Government themselves maintain those institutions?

MR. EDAVANATT S. PADMANABHA MENON (*Shertala I*): Of course in British India the power is given according to the Lunacy Bill of 1912 and subsequent amendment and enactment show that there is power vested in the Government *i. e.*, the power to issue licenses. But it will depend upon local conditions that are obtained in each country. Whereas in England and America where Local Self Government and adult education have advanced far we see this power vested more widely in Country Councils and other local bodies. In the absence of Taluk Boards or District Boards and other efficient machinery of Local Self-Government and considering the peculiar conditions that are obtained at present in our State I earnestly wish that the larger power of issuing licenses and of recognising voluntary institutions in this direction need not be encouraged by this House.

MR. P. CHIDAMBARAM PILLAI (*Commerce and Industry, South*): In supporting the amendment, Sir, I am well aware that the matter is one which gives a good deal of apprehension. The question arises as to who is to declare a person a lunatic. Personally I would prefer to be called a lunatic by the Government than by any other agency and more so as the danger is great in the case of politicians. To political opponents we might appear lunatics and therefore we have got to be very careful when we deal with this matter and the questions that may arise in this way. (*laughter.*)

DEPUTY PRESIDENT: Then it must come to this; if political correspondence is carried on by anybody it must come under the Regulation. I mean this only as an observation.

MR. P. CHIDAMBARAM PILLAI (*Commerce and Industry, South*): We cannot say when we ourselves might be sane (*laughter*) and lose our common sense. Sometimes at our most lucid intervals we may be accused of being insane. At any moment, as I submitted earlier, I would rather prefer that the Government would declare any person a lunatic than a private agency.

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MR. S. CHATTANATHA KARAYALAR (*Shencotta*): Is there any provision in the Bill for declaring a person a lunatic by any one other than the Government?

MR. P. CHIDAMBARAM PILLAI (*Commerce and Industry, South*): In the Bill an asylum means an asylum or mental hospital for lunatics established, or declared to be such, by our Government. Therefore any house might be declared a lunatic asylum. As learned friends suggested the Government might declare a person a lunatic as also a body of persons. We have got to be very careful if at all we have got to enter into an asylum and there must be the necessary safeguards. The first thing is there must be control by Government and, as my learned friend Mr. Krishna Pillai pointed out, it must be granted only under a license given by the Government. That is an essential thing. Secondly as matters stand one cannot say whether there is such a huge demand for lunatic asylums in Travancore (*laughter*). I do not know whether our Governmnet institutions are overstocked. But as an Ex-Dewan himself pointed out our insane people are more cared for in Travancore in the Oolampara Hospital than even the sane people. Therefore at any rate till we find that we cannot accommodate all the lunatics, it will be better the whole thing is done under the patronage of Government. I would therefore support the amendment.

MR. K. R. ELENKATH (*Kalkulam I*): I also rise to support the amendment. The clause as it stands would provide facilities for the Government to shirk responsibility on their part of affording protection and care to the lunatics for the interest of whom the Bill is intented. We find that the object of this Regulation is mainly to provide for the proper safe-guard and care of the lunatics. Even a near relative, it is feared, would be cruel to his lunatc friend. He is therefore assured to be sent up to the lunatic asylum. Imagine with what interest a private agency which runs an institution would look to the needs of these men. There is no doubt that a relation of the lunatic will have greater interest for the safety and well-being of his relative than any of the so-called charitable institutions as we find in the State. This is the main ground on which I support the amendment. We must not give the Government every facility to shirk all their responsibilities and give room not to do their mite to the poor deserving people for whose welfare we are passing this Regulation. With reference to private institutions of the kind we already have, I cannot but observe that we do not find disinterested selfless work on their part for the welfare of the patients who are under their care. This Regulation may help the origin and growth of private institutions in the direction. It may then be necessary for the Government to provide for big grants for the upkeep of such institutions. That means Government will have a heavy burden while at the same time neither the poor nor the people through their representative institutions will have any responsibility over such institutions. For these reasons I support the amendment.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I oppose the amendment. It will be seen that the purpose

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of the clause sought to be amended is to vest in Government a power to declare any institution an asylum or mental hospital for the purposes of this Regulation. The chief ground on which it is opposed, at any rate one of the grounds, is that in the corresponding British Indian Act the provision is that licenses may be issued authorising the establishment of asylums whereas we have not got such a provision and that there the licenses will be given only under conditions. My point is that the provision in our Bill is much better than the system of issuing licenses under conditions provided for in the British Indian Enactment, because, under the British Indian Act, *any* person who has satisfied the conditions laid down can claim the license from Government as a matter of right. On the other-hand, under the provision in the present Bill, the discretion of Government is wide and unfettered, and may be made to suit the exigencies of the situation. It would be open to Government, for instance, to insist on further conditions being satisfied besides the conditions laid down in the British Indian Act, before they grant a declaration. It is not possible now to anticipate all the conditions that may have to be insisted upon before a declaration is granted. When perhaps years hence, a private body comes forward with the idea of starting an asylum, we have to consider all aspects then. It is with a view to empower the Government to exercise greater control over private charitable asylums than in British India that the present provision in the Bill has been made.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): May I ask whether there is any provision in the Bill to the effect that the Government shall insist at least on the few conditions provided for in the British Indian Act, being fulfilled before they grant a declaration?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): No. But I have certainly no objection to consider an amendment which provides for some such conditions. There is no such amendment now before the House. If the present amendment is carried, no private institution can at *any time* come forward and start an asylum.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): Should there not be a statutory obligation on the part of Government to insist on certain conditions before they grant a declaration?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): That is a matter of opinion. I do not myself think such a statutory obligation is quite necessary or useful. As I stated, if there is statutory obligation like that, Government would be under an obligation to issue a declaration in all cases in which the conditions prescribed in the enactment are fulfilled. I do not want the Government to be placed under such an obligation. I want the Government to have unfettered discretion in the matter. Even if the conditions similar to those laid down in British India are fulfilled, Government must have power to refuse to grant the declaration or to insist on other conditions if they con-

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[Mr. Kayalam Paramesvaran Pillai.]

sider it necessary. It all depends on the circumstances at the time that they have to grant the declaration. I do not believe that it will be possible now to anticipate all the conditions that may have to be fulfilled in the various cases as they arise from time to time.

MR. A. THANU PILLAI (*Trivandrum-Rural*): In that case, where is the difficulty in making a provision enabling the Government to frame rules imposing additional conditions, if they consider it necessary, besides the conditions laid down in the statute?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): There is none. But, unfortunately, there is no such amendment now before the House. If Mr. Krishna Pillai had stated that the declaration should be given only under certain conditions, I can understand that and perhaps I could accept it. But what he wants is that the provision should be taken away entirely making it impossible for private institutions or local bodies to come forward, at any time, and start asylums. That is my objection to the amendment. Unless it is the view of the House that no asylum should be established except by the Government, there is no justification for passing the amendment now before the House. I do not think the House will consider it wise to saddle the Government with the sole obligation to maintain all the asylums in the State.

It was suggested, Sir, that Government may act arbitrarily in granting the declaration. I may point out that, like every other action of Government, this also will be subject to the control of this House to the extent allowed by the statute. For instance, if the House considers that the Government have arbitrarily or wrongly issued a declaration, it is open to them, when the appropriate budget demand is made in this House, say under the Medical Department, to carry a token motion censuring the action of Government. There is therefore no ground for the apprehension that the Government may act arbitrarily.

MR. M. SIVATANU PILLAI (*Tovala*): May I know whether, under this Bill, the policy of Government is to encourage private asylums or hospitals?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): It is not exactly a question of *encouraging* private institutions. If private institutions come forward, Government will allow them to run such institutions subject to conditions which the Government may consider necessary from time to time.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): What are those conditions?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): As and when applications are received, Government will consider what conditions they must impose. As a matter of fact, the conditions may vary in each case. They may also depend upon the times. If the Government receive an application, say ten years hence, we cannot anticipate now the conditions that may have to be imposed.

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It may depend on the circumstances that obtain then. I want the Government to be given full discretion in the matter.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): Is there anything at present to prevent private institutions from starting and running asylums?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): If this Bill is passed, as it is private asylums cannot be established without a declaration from Government.

As I was submitting, Sir, once we take away this provision of the Bill, as proposed now by Mr. Krishna Pillai, no private institution can ever think of coming forward to start an asylum.

MR. M SIVATANU PILLAI (*Tovala*): May I ask how the member reconciles the present provision with similar provisions that were read by Mr. Pnthupalli Krishna Pillai?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): One of the conditions laid down in the statute is that no person can come forward..... .....

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): Under the provision in the British Indian Enactment, is there any obligation on the part of Government to declare an institution an asylum the moment the conditions are satisfied?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*). If Government refuse to issue the license after the conditions are satisfied, the private body may perhaps even sue the Government and make them issue a license.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): Is it stated that Government *shall* issue the license if the conditions are satisfied?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Once certain conditions are laid down for the issue of a license the idea is that the license shall be granted. Even if it is not legally enforceable through a court there is an obligation to grant the license.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): Am I to take it that, because conditions are laid down, Government are bound to issue the license?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*). Surely there must, at least, be a moral oblication to grant the license. I draw a distinction between *license* and *declaration*. If it is a license to be issued under certain conditions, according to me, Government are bound to issue the license on such conditions being fulfilled. But, on the other hand, if it is a declaration it is entirely left to Government to grant it or not irrespective of the conditions that may or may not have been fulfilled. Apart from that, the more important reason is this. The Legislature may now think of condi-

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tions *a*, *b* and *c*, for instance. Years hence, when actually an application is made to Government for a declaration, condition *d*, may turn out to be necessary at the time. That is why I want the discretion to be left entirely in the hands of Government.

MR. M. SIVATANU PILLAI (*Tovala*): Is it not better to give an idea of the conditions beforehand so that people may know where they are?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): It is a matter of opinion as to whether it is better to leave it to Government to impose conditions as they deem necessary in the circumstances at the time applications are made to them, or to anticipate and impose uniform conditions for all cases alike for all time to come.

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): If private agencies are likely to come up only years hence, why not we be satisfied till then with Government institutions alone?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) It the present amendment is carried, no private agency can at any time think of coming forward to start an asylum until and unless this provision is amended by another enactment. That is why I have made permissive provision in the Bill giving the Government full discretion in the matter.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): Why should we make a law when there is no necessity for it?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): There is a necessity; because if this Bill becomes law private bodies may freely come forward, start these charitable institutions and do good to the people and also give relief to Government. If there is no provision for it, nobody can come forward, unless he first gets the law amended.

MR. K. R. ELENKATH (*Kalkulam I*): May I know whether the member really expects private institutions to come forward for starting these asylums?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) Yes, I do expect; there are charitable men everywhere.

MR. M SIVATANU PILLAI (*Tovala*): Will it not be more advantageous if such charitable men are let known beforehand the conditions that they may have to satisfy in order to start such institutions?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I have already stated that, if specific conditions are now laid down, it would be open to the private body concerned to insist on being allowed to start asylums on satisfying those conditions alone.

MR. M. SIVATANU PILLAI (*Tovala*) Is there any provision in the Bil in regard to contribution by Government towards these institutions?

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MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): The terms of each declaration will provide for that.

MR. P. CHIDAMBARAM PILLAI (*Commerce and Industry, South*): Suppose a lunatic wants to start an asylum. Where is the safeguard against such a contingency? (*Laughter.*)

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): If the member is serious in asking that question, I may at once say that that is an impossibility.

DEPUTY PRESIDENT: Will Mr. Chidambaram Pillai please oblige the Chair by repeating his question?

MR. P. CHIDAMBARAM PILLAI (*Commerce and Industry, South*): Is there anything in the Bill to safeguard against the danger of a lunatic starting a lunatic asylum?

DEPUTY PRESIDENT: The Law Member has already indicated that he does not consider it a serious question.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I submit, Sir, that the present provision in the Bill is much more advantageous in public interests than the amendment proposed. My friend Mr. Krishna Pillai suggested that, once a declaration is granted, even the Government have no power to cancel it if it becomes necessary to do so, because there is no provision for it. But there is no such amendment now before the House. But I can assure the House that, if that is all the objection, I can bring forward an amendment at the third reading of the Bill expressly providing for the cancellation of a declaration, if and when it becomes necessary to do so.

Objection was also taken to the provision in regard to the control by non-official visitors to declared institutions. There also, there is no amendment before the House and the amendment does not relate to it.

As I stated at the outset, Sir, if an amendment had been proposed laying down certain conditions under which the declaration had to be granted by Government, I could have gladly accepted it with an addition "*and others as the Government deem it necessary*". But unfortunately there is no such amendment before the House. If the amendment now before the House is carried, the effect will be, as I have more than once pointed out, that no charitable institution can at any time come forward to start an asylum. That is not at all desirable in the interests of the public. I therefore oppose the amendment.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): I am extremely sorry, Sir, that the learned Law Member has not correctly understood my position. In the absence of adequate safeguards, this extraordinary and extensive power of making declarations ought not to be conferred upon Government that is my position.

If the learned Law Member had followed the British Indian Act faithfully, I would have had no objection. Sir, another Law Member in introducing a similar Bill in this Legislature stated as follows:—

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"There are Lunacy Laws in every civilised State, in some form or other. A systematic control of the lunatics and their estates is exercised by every civilised State under legal process, and there are in England and in British India several Statutes and Acts prescribing the procedure to be adopted in such cases".

It is no doubt the right of the State to take such steps as they deem fit for the protection of the estate and the person of the lunatic. When this right is put on a statutory basis, we are entitled to treat it as a part of the duty of the State and require safeguards for the due discharge of those duties. The primary responsibility is that of Government. If Government want the help of private agencies for fulfilling their obligations towards the subjects of the State, they shall do so only under restricted conditions. All the seventy and odd sections in this Bill are restrictive of the powers of Government in their direct conduct towards the lunatics. It does not appear why Government want unrestricted power to administer the affairs of the lunatics when such administration is to be carried out through private agencies.

Various arguments are advanced by the learned Law Member why this amendment should not be allowed.

In the first place the British Indian Enactment enables the British Government to call into aid their private institutions for effectively carrying out the provisions of the Act. Government may require the help of private agencies, and if there is no enabling provision, as would happen if the amendment is allowed, Government may find it difficult to take care of all the lunatics of the State. It will also have a tendency to prevent private institutions from coming into existence. These may no doubt be true, but an unrestricted sprouting up of private institutions and an unrestricted inclination on the part of Government to enlist private help are both harmful to the State. The disadvantages resulting from such a course far outweigh the possible advantages and conveniences. An unrestricted power is liable to be abused and when once abused, it leaves us without a remedy. This is a Government Bill and it asks for a certain power to Government, but the Bill itself does not guarantee that the power will not be abused. The question involved in this amendment is only whether we vote for this tall order. My answer is that we shall not. Another argument advanced by the Law Member is that under the British Indian system the licensing power reserved with Government is a power which can be compelled to be exercised in favour of a private institution that satisfies the conditions and even goes to the extent of saying that Government will be liable for damages if license is not issued to any such institution. I am simply surprised at this statement. It is a power given to Government to permit private institutions to take in lunatics. It is not a power given to private institutions to claim licenses. It is a power which Government *may* exercise and not a power which it is said it *shall* exercise in favour of any institution. It is only a *license*, which expression implies in law, only *leave, option*. It is again a license which is

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liable to be revoked under certain circumstances. The Law Member's argument would be right if he said that a license once granted could not be arbitrarily revoked. That is different from saying that a license shall be granted. Still more surprising is the Law Member's argument that the provision for a declaration is more efficacious than a provision for the issue of a license. He further says that the greatest advantage is to be derived by the fact that this power of declaration is unfettered by any condition. He wants us to have implicit faith in the wisdom and good sense of Government. If conditions are laid down now, he says, those conditions will not suit the conditions available or proper, say, twenty years hence. All that I can say by way of reply is that it would be proper if we are legislating for eternity. If that is the way in which legislative enactments have to be passed, then there will be no room for amending Bills. There will be no need for future legislators. Only one clause Bills shall be introduced, with pre amble "That whereas we have implicit faith in the wisdom of Government. We enact that Government shall do what they want, say, (1) In the case of lunatics (2) In the case of District Municipalities (3) In the case of City Municipalities etc.etc." If this is the sort of provision that the Law Member has made, we must emphatically protest against it. Even in matters where Government conduct is well regulated by rules, I can quote hundreds of instances in which Government have committed palpable errors. What was considered by Government to be proper in 1108 is seriously declared to be wrong by the same Government in 1109. Yet the Law Member wants us to believe in the myth of the infallibility of Government wisdom. Sir, in reply to my contention that this express provision empowering Government to make a declaration must be accompanied by an express power to cancel that declaration under proper conditions, the Law Member says that the idea is good and sensible, but that I should have brought forward an amendment to that effect. It is not the duty of any member of this House to bring forward an amendment on lines most suiting the Law Member's convenience. He has made a provision in the Bill which I have shown to be absurd and improper. If the Law Member wants to retain that provision, he may bring forward such amendments as would make the existing provision sensible and proper. Until that is done, my amendment will be only to delete the offending provision in the Bill. The only result of the amendment is that a bad provision will be removed.

The argument of the Law Member in favour of private enterprise is equally unconvincing. This House has not yet been convinced that any private institution is a loser by the non-existence of this provision. It is for the safety of private individuals that they should know previously and definitely what they should do before they can induce Government or hope to induce Government to make a declaration under this statute. Otherwise there is a risk of much private money being wasted. These private individuals must be enabled to utilize their money for purposes beneficial to the public. The good name of

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[Mr. Puthupalli S. Krishna Pillai]

Government will also be maintained unimpaired. There will be no difficulty in bringing in an amending Bill when we are convinced that a real necessity has arisen.

MR. M. SIVATANU PILLAI (*Tovala*): May I know from the member that if the provisions in the British Indian Act are incorporated in the draft Bill, he will have no objection?

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): As matters now stand, of course, that is only an hypothetical question. The Law Member himself is unwilling to do that. It would have been well if he had promised that. As matters now stand, Government alone should have the power to establish lunatic asylums. Private individuals should not be given the power to start lunatic asylums. It was said by the Honourable member, Mr. E. V. Krishna Pillai, that charitable institutions should come forward to do these things. Here it is not a matter of charity that we are at. Here we are dealing with matters relating to a separate class of people who are physically human beings, but mentally not so. What are the best provisions that we have to make in order that this class of persons may be best protected. Charitable institutions need not be fostered at the expense of lunatics. Let us permit both charity and lunacy to live in company with sanity.

DEPUTY PRESIDENT: Before putting the amendment to the vote of the House I wish to make a point clear. The discussion was lively, the speeches were long and the wealth of argument was prodigious. We have covered a very extensive tract of ground from the pride of citizen-ship to the efficiency of internal management of lunatic asylums. So that to enable the House to have a clear perception of the point, I wish to state that the position contended for by Mr. S. Krishna Pillai is that for the word 'or' in clause 2, sub-clause 1, line 1, the word 'and' should be substituted. He said in the course of the argument that the rights of individuals are very sacred. I would therefore refer to clause 3 which says that no person other than a criminal lunatic etc., shall be received or detained in any asylum except under a reception order. The point which has been pressed upon the attention of the House by Mr. Krishna Pillai relates only to the efficiency of the institution into which these lunatics so found are taken. There are two sets of institutions contemplated, those established and declared to be such by Government and those established by private agency but declared to be such by Government.

Now I put the amendment to vote.

The amendment was put to the vote of the House and carried.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Sir, I demand a poll.

A poll was taken and the House divided as follows:—

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AYES - 31.

1	Mr.	V. T. Chacko	16	Mr.	Pacode A. Narayana Pillai
2	,,	P Chidambaram Pillai	17	,,	P. K. Narayana Pillai
3	,,	A. S. Damodaran Asan	18	Srimathi	T. Narayani Amma
4	,,	K. R. Elenkath	19	Mr.	S. Nilakanta Pillai
5	,,	S. J. Nair	20	,,	K. Padmanabhan
6	,,	T. S. Jayanthan Nambootiri	21	,,	Edavanatt S. Padmanabha Menon
7	,,	Mr K. P. Krishna Menon	22	Rao Sahib	S. Paramesvara Aiyar
8	,,	Pottayil S. Krishna Panickar	23	Mr.	Changanachery K. Paramesvaran Pillai
9	,,	N. K. Krishna Pillai	24	,,	V. Ramakrishna Panickar
10	,,	Puthupalli S. Krishna Pillai	25	,,	R. Sambasiva Aiyar
11	,,	K. Kunjukrishna Pillai	26	,,	K. Sankaran
12	,,	M. K. Madhavan Pillai	27	,,	M. Sivatanu Pillai
13	,,	M. N. Nair	28	,,	A. Thanu Pillai
14	,,	P. C. Narayanan Bhattatiripad	29	,,	S. Thiraviam Nadar
15	,,	K. A. Narayana Pillai	30	,,	V. K. Velappan Nair
			31	,,	T. P. Velayudhan Pillai

NOES—30.

1	Mr.	N. Abdur Rahiman Sahib	17	Mr.	T. Krishna Pillai
2	,,	K. C. Abraham	18	Rao Sahib Dr.	N. Kunjan Pillai
3	,,	T. K. Alexander	19	Mr.	E. K. Kunjuraman
4	,,	S. Chattanatha Karayalar	20	,,	K. Madhavan
5	,,	A. Easwara Pillai (*Kottarakara*)	21	,,	K. Mahomed
6	,,	John Whitely Tolson	22	,,	G. Nilakantan
7	,,	Antony George	23	,,	R. Nilakanta Pillai
8	,,	James Simpson	24	,,	N. K. Padmanabha Pillai
9	,,	M. Mahomed Haneef	25	,,	Kayalam Paramesvaran Pillai
10	,,	M. K. Janardana Kamath	26	Rao Bahadur	N. Ramanuja Aiyangar
11	,,	N. John Joseph	27	Mr.	R. M. Statham
12	,,	T. C. Joseph	28	,,	T. C. Thommen
13	,,	K. C. Karunakaran	29	,,	G. B. E. Truscott
14	,,	T. T. Kesavan Sastri	30	,,	N. E. Varughese
15	,,	K. M. Krishnan			
16	,,	E. V. Krishna Pillai			

NEUTRALS—2.

1	Mr.	A. Easwara Pillai (*Kalkulam II*)	2	Mr.	P. K. Thomas

The amendment was declared carried.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): Sir, I beg to move the following amendment:—

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Substitute the following for sub-clause (8):

"Medical practitioner means holder of a qualification to practise medicine and surgery which can be registered in the United Kingdom in accordance with the law for the time being in force for the registration of medical practitioners and includes any person holding a degree conferred in accordance with the provisions of the Medical Degree Act (Act VII of 1916) of the Imperial Acts of India.".

Sir, in this amendment I have in view the extremely unsatisfactory nature of the definition as it stands. On a careful study of the definitions contained in analogous legislative enactments, I find that the definition of the expression 'medical practitioner' found in the corresponding British Indian Legislation (Act IV of 1912) is more clear and lucid. The first portion of the definition contained in my amendment is a copy of the definition contained in the British Act. The remaining portion is introduced in order that the definition contained in our Bill may be made more clear and specific. The principle accepted by Indian Medical Degrees Act is that a medical practitioner for purposes of the Act shall be only a person who practises western medicine as distinguished from the holder of a degree that may be granted by the Indian Universities in Unani, Homœopathy or Ayurveda. It was to bring to the notice of the House whether these systems of medicine have developed so far as to obtain statutory recognition and whether those who practice Unani, Homoeopathy or Ayurveda should be considered to be efficient to give a medical certificate under the Regulation. The importance of a medical certificate under the Lunacy Regulation is that the court in the first instance is entitled to accept the certificate in its entirety and act upon it forthwith and pass a reception order directing the detention of the alleged lunatic. This is enacted for the sake of expediency and the avoidance of delay. No doubt there is provision in the Bill for the court to call for further evidence. But if the certificate is not issued by a competent person, accepted by the world as one competent to issue the same, it will lead to serious consequences and frustrate in very many cases the object of the Legislature.

DEPUTY PRESIDENT: You will be facilitating discussion by reading that particular clause in the Act VII of 1916. You refer to that and that may be read, that is the provision of the Medical Degree Act VII of 1916.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): Yes, Sir. "This Act may be called the Indian Medical Degree Act. In this Act western medical science means the western methods of Allopathic medicine obstetrics and surgery but does not include the Homœopathic, Allopathic or Unani system of medicine". The next section deals with the Universities which are authorised to grant degrees, diplomas, etc. Coming to the definition of the expression 'medical practitioner' found in the British Indian Lunacy Act we have the following:—

"Medical practitioner means a holder of a qualification to practise medicine and surgery which can be registered in the United Kingdom in accordance with the law for the time being in force for the registration of medical practitioners."

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It is well known that in the United Kingdom, the Royal College of Surgeons who, under Act of Parliament, exercise the right of recognising and registering the names of medical practitioners, recognise any system other than the western medical science.

Under that statute no other person will be entitled to secure a qualification. Then we come to the next portion of the definition "any person declared by general or special order of Our Government to be a medical practitioner for the purposes of this Regulation". That portion, Sir, gives the Government a power to declare any person as a medical practitioner for purposes of this Regulation. It gives the Government that sound discretion in making a choice and declaring him as medical practitioner even though he is not entitled under the former section to practise in the United Kingdom. It is left to the discretion of the Government either to recognise or not to recognise. Let us look into the definition as it stands now. The definition found in the British Indian Enactment will be inadequate for certain purposes. Now under the existing circumstances a man of the Bombay University is not entitled to practise in England. Therefore it is that I added "that every person who holds a degree conferred in accordance with the provisions of the Medical Degree Act of British India" shall be a medical practitioner. Here the medical practitioner means a holder of the degree of Doctor, Bachelor or Licentiate of medicine and surgery of any of the British or Indian Universities. We let alone the British Universities. They will confer only degrees recognised in England. But what about the Indian Universities granting Ayurveda, Homoeopathy, Naturopathy and Unani degrees. If a person comes forward and says that he is the holder of a degree conferred upon him by any of the Indian Universities he shall be a medical practitioner for this purpose.

DEPUTY PRESIDENT: Not a person who says, but a person who holds a degree.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): Yes, I know several persons who hold degrees conferred upon them by some of the Indian Universities.

DDPUTY PRESIDENT: Does not the member know that a University can be brought into existence only by an Act of Government?

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): Yes, I can very well understand the position. If a University comes into being under the Act of the Governor-General in Council for issuing certificates under the Unani system of treatment and if the holder of such a certificate comes forward, are not the Government under the provisions, as they now stand, bound to authorise him to issue certificates? If any body says that the certificate issued by such a person shall be rejected that person, under law, can be sued for slander. The Act of 1916 recognises the medical colleges of Madras, Bombay and Calcutta,

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DEPUTY PRESIDENT: So, in other words, you do not want the Unani, Ayurveda, Chindarmani or any other such system of medicine?

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): The statutes should not be so framed as to enable those peresons to come in and claim authority to issue a certificate. Let us therefore be clear on this point. I am certain that in accordance with the law prevailing in London a certificate filed by any other person will not be accepted as legal. As legal practitioners we come across numerous instances of bad medical certificates issued by various classes of persons. There is a sanctity attached to medical certificates issued under a statute. It must therefore be issued only by the most competent person who has a high degree of recognised skill. I want to bring to the notice of the House the difficulty arising from the definition as given in the Bill. All that I have to say is that it will not be consistent with the spirit of the Bill. I would therefore suggest this amendment. If the definition, as it stands, in the British Indian Enactment, was copied with the necessary amendments I would not have found any objection.

There is another and a more serious difficulty that is not contemplated in the British Indian Enactment. 'Medical practitioners' means the holders of the degree of Doctor, etc. Now under this definition it is enough if one is only the *holder* of a degree. Now, Sir, if I happened to have qualified myself for M. B. B. S. and then practised law and to take care not to miss my M. B. B. S. certificate, am I not still the *holder* of the certificate? I may not be a person who has ever practised medicine or surgery. Still I am the holder of the certificate. Would the law be satisfied with a certificate issued by the holder of such a certificate? We have several persons who have qualified themselves in surgery but who have never practised. Are we satisfied with the holder of such a certificate?

DEPUTY PRESIDENT: Lord Macaulay was a Lawyer, but he did never practise in the courts.

MR. PUTHUPPALLI S. KRISHNA PILLAI (*Quilon II*): There are M. B. B. S. certificate holders who have never opened even a boil.

MR. A. THANU PILLAI (*Trivandrum-Rural*): May I know whether that objection can be remedied by this amendment?

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): In the United Kingdom a person who qualifies himself to practise medicine and surgery is immediately recognised as a practising medical practitioner. His name is entered in a register kept for the purpose. If he does not practise medicine, he is bound to intimate the same to the authorities when his name will be struck off. In order that he may again practise, he will have to undergo another examination or test.

DEPUTY PRESIDENT: So you would like to have even an improvement of the British Indian Act?

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): Excuse me, Sir, it is a pardonable ambition. My amendment stands like this.

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DEPUTY PRESIDENT: We are concerned with the amendment as it stands.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): I am not still helpless. Form 3 in the statute enjoins the person who issues the certificate to make a declaration that he is a practising medical man. That provision was made in order that the difficulty that I suggested may be avoided. If you will not allow any alteration in the amendment as it has been printed, I shall rest satisfied with the provision in the form, for I am convinced that no person will undertake all the risk involved in making a false declaration. The definition should be so framed that no person who is not properly qualified shall be entitled to issue a medical certificate. With these words I bring this amendment for the acceptance of the House.

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): I second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Although I cannot accept the amendment in the form proposed and although I do not think that, as a matter of fact, any practical difficulty will arise in the application of the definition, in the Bill, now that the point has been raised by Mr. Krishna Pillai I think I must admit that his contention that this definition may perhaps include a Unani or a Homoeopathic practitioner is not quite baseless. I do not however like to accept the amendment as proposed by Mr. Krishna Pillai because that will have the effect of our hanging on always to the British Indian Act. As Mr. Thanu Pillai suggested supposing the British Indian Act is amended in conformity with their convenience and needs and if they bring in as medical practitioners men whom we are not prepared to accept, what will be our position? It will therefore neither be a wise step to hang on to enactments of other places in this manner nor is it necessary for us to do so. It is better for us to be independent and stick to our definition making it suitable to our requirements. This argument applies to the English Registration Procedure in England. They may change having regard to their conditions. We cannot therefore stick on to that too. We must make a position for ourselves. Further there are many qualified practitioners in Travancore to-day who are not perhaps qualified to get registration in England and perhaps who do not hold a degree from any of the recognised Universities. I mean the Indian Universities according to Indian Medical Degrees Act. In view of all these I am prepared to accept the spirit of the amendment with some modification to the following effect:—

> "Medical practitioner means a holder of the degree of Doctor, bachelor, or Licentiate of Medicine and Surgery of any of the British or Indian Universities recognised by Our Government or any person recognised by our Government to be a medical practitioner for purposes of this Regulation."

So that, the Government must have the power to recognise or not to recognise. Some such idea may be given effect to. It is not quite expedient that we should hang on to the procedure in British India or England.

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MR. P. K. NARAYANA PILLAI (*Ambalapuzha I*) : May I know whether he is prepared to drop the final portion of the definition, *viz.*,

"Any person declared by general or special order.....this Regulation?"

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : No, Sir. There are many practitioners here in Travancore who, though not possessing any University qualification, are yet competent doctors. They cannot be included statutorily. Again, a practitioner may, for instance be a graduate of the French or Austrian University. Travancore Government may not accept such degrees as a matter of course, but there must be provision to recognise them.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha I*): Without any University qualifications is it not open to Government to make a man competent for issuing certificates ?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) Yes. As I said, there are very efficient practitioners in Travancore who do not hold a University degree and who are yet quite competent.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha I*): Probably you are speaking of American doctors.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : There are also local doctors. I do not want to exclude them by means of a statutory declaration from competency to give a certificate.

DEPUTY PRESIDENT : According to the Law Member one of the Ashtavaidyans can be recognised by Government as competent to issue a certificate.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : Yes. Even if he is a man who does not hold any University degree Government must have power to recognise such a man as competent to issue a certificate.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha I*): Where is the advantage to exclude efficient Unani or Homoeopathic Vaidyans and allowing them at the same time to issue certificates under Government recognition ?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : When a power is conferred on Government it is expected that Government will not abuse that power. If it is considered that the Government will abuse that power some precautionary provision may be made for it.

MR. K. R. ELENKATH (*Kalkulam I*): Why not we add in the latter part of the definition the words "and in the absence of.....".?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : If the idea is that Government should make the declaration only if there be no such person holding the degree, then Government will not be in a position to bring in the local doctors. If the House thinks that the Government will go out of the way and abuse their

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power, then it is perfectly open to the House to delete the provision. To me it appears there is no reason to be apprehensive of Government. There are very efficient doctors who do not hold any University degree and who are qualified to issue a certificate for purposes of this Regulation. It is only right that some power is left under the Regulation to enable the Government to declare even persons who do not hold any degree to be competent to issue certificates. Therefore I am not agreeable to the latter portion of the definition being deleted. I am prepared to concede with regard to the first portion that the definition may perhaps include a Unani expert, a Homoeo expert and so on. As I said, I am prepared to add ".....any of the British Indian Universities recognised by Government for purposes of this Regulation."

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): May I know what prevents Government from recognising even otherwise?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Nothing.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): That is why I say it is open to Government to recognise such. My aim is to prevent that by putting a provision.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): By all means do it, if that be of real purpose.

MR. S. CHATTANATHA KARAYALAR (*Shencotta*): Is there any University to confer Homoeo degrees or Unani degrees?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): No. Not that I can think of. At any rate not in the British Empire.

MR. A THANU PILLAI (*Trivandrum-Rural*): May I know which is that clause that is contemplating to exclude Ayurvedic physicians; or is it that Government may declare an Ayurvedic physician to be a medical practitioner for purpose of the Regulation?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): There is no such clause. If the House thinks that they should be statutorily excluded, by all means make provision for it. To me it seems that some power should be left with Government to recognise efficient persons though they did not possess any degree at all.

DEPUTY PRESIDENT: I have some doubts to be cleared. Because I am occupying the Chair it does not mean, I must suppress ideas which I consider important. This House is granting money for the maintenance of the Ayurvedic Department. Ayurvedic physicians are allowed to treat patients suffering from very serious diseases, fatal diseases, sometimes. And the Ayurvedic system recognises that there is a disease known as lunacy. When this House is expending money on the maintenance of institutions in order to train people to practise medicine, I wish the Law Member to consider that aspect in considering this question.

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MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I, for my part, do not want to exclude the Ayurvedic doctors statutorily. They may be quite competent to certify a person to be a lunatic.

DEPUTY PRESIDENT: Anybody else wishes to speak?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha I*): Anyhow since Mr. Parameswaran Pillai says he would reconsider the definition, it is not now necessary to discuss the matter any further. The need for reconsideration is admitted by Mr. Parameswaran Pillai. Mr. Parameswaran Pillai himself may, therefore, reconsider the definition and submit another definition for the consideration of the House. Though I agree with Mr. Krishna Pillai in thinking that the definition, as it stands in the proposed clause, is not quite satisfactory, I am not satisfied with the definition proposed by him. Therefore, if Mr. Parameswaran Pillai will undertake to consider the definition and amend the definition, as it stands, I think we may consider it at another stage of the Bill.

MR. A. THANU PILLAI (*Trivandrum-Rural*): Is it a change in the substance that the member suggests?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha I*): Not exactly a thorough change in substance. The amendment proposed is dependent upon the British Indian Statute. For our guidance I do not want borrowed light like that. At the same time the very wide discretion now vested by the clause in question, in the Government, for declaring any one a lunatic by means of any medical agency, requires some de-limitation. Therefore both ways the definition needs pruning. The Unani and Homoeopathy systems of medicine may be left out of consideration as these systems are not recognised in Travancore.

MR. A. THANU PILLAI (*Trivandrum—Rural*): What is the member's opinion to make a distinction in the case of an Ayurveda physician?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha I*): He need not be excluded. He is treating mental diseases and the Ayurvedic system of treatment has proved successful in several instances.

RAO SAHIB ULLOOR S. PARAMESVARA AIYAR (*Nominated*): Is the member aware that the title of "Vaidya Siromani" is conferred upon some of them in view of their proficiency?

MR. P. K. NARAYANA PILLAI (*Ambalapuzha I*): I know there are eminent medical practitioners in the Ayurveda field.

Then, in view of the necessity of certifying as to lunacy, it may not be possible to get down a man from England to certify to a case of lunacy that may occur in a village part in Travancore. I have no objection to eminent medical practitioners in the Ayurveda system being authorised to certify to lunacy. A comprehensive definition eliminating quacks from its scope is necessary. Since this is admitted by Mr. Parameswaran Pillai himself, I think, a reconsideration of it is worth while before we come to the close of the Bill. Some of us may also think of a happier definition of "medical practitioner" this evening when we go home by referring to authorities and the matter may be considered to-morrow. Now we may leave this matter as it stands

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without voting and proceed to the other amendments proposed. That is, what I think, the proper way of dealing with the matter.

MR. PACODE A. NARAYANA PILLAI (*Vilavankod*): I wish to make a few observations in regard to the amendment moved by the Honourable member. In Travancore there is no legislative enactment defining the term medical practitioner, as there is in British India. In British India there is the Medical Practitioner's Act. What standard of efficiency is to be possessed by the medical practitioner is laid down there. Sir, in different countries different standards of efficiency have been laid down by suitable legislative enactments. If only we have in Travancore a Regulation prescribing the minimum qualifications necessary for a medical practitioner, all the defects pointed out by the Honourable members may be easily avoided. So, what I would suggest is that the definition in sub clause (8) may be amended like this:

"A medical practitioner means a holder of a degree of Doctor, Bachelor or Licentiate of Medicne and Surgery of any British or Indian Universities and includes any person declared as such by any law for the time being in force in Travancore".

It being understood of course that a suitable measure will be before this House for declaring a person a medical practitioner.

DEPUTY PRESIDENT: That is, in view of a possible legislation you want to sanction this clause?

MR. PACODE A. NARAYANA PILLAI (*Vilavankod*): That is not stated here. It has to be understood that ere long a suitable measure will have to be passed by our Legislature defining the term "Medical Practitioner".

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): Have we to make all these considerations in considering this amendment?

MR. PACODE A. NARAYANA PILLAI (*Vilavankod*): Certainly, all those considerations which we have to make in passing a fresh enactment have to be considered now that we have to pass the amendment here. That is wrong in principle. That requires a separate enactment altogether. That requires great deliberation, greater attention. All that cannot be done when we consider this small amendment to sub-clause (8).

DEPUTY PRESIDENT: So you wish to have the definition as it is?

MR. PACODE A. NARAYANA PILLAI (*Vilavankod*): Yes, Sir, as it is.

MR. JAMES SIMPSON (*Darbar Physician*): Sir, there is one point which the member perhaps, has not pointed out. It is the fact that the preceding clause to clause 8, namely clause 7, defines who a medical officer in the State is. There are in the State, persons who do not possess degrees in western medicine and who, at the same time are medical practitioners. It is therefore desirable that the qualifications of the medical officer, authoritised to issue a certificate, should be specifically laid down. Therefore, I think I agree with my friend on the opposite side that we should leave this to the Law Member to get a more comprehensive definition.

Then there is the question of including practitioners in the Ayurveda system of treatment or any other native medicine in the term

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[Mr. James Simpson.]

"Medical Practitioners". I do not say they are not successful in the treatment of mental diseases or that we are better than they. I do not say we are. But it must be granted, and I am entitled to say, that there is no method by which the standard of efficiency in eastern medicine can be tested. And I will suggest that the only standard we can go by, is a degree in western medicine. Ayurveda practitioners and Homoeopathic Doctors are given only certificates without being trained in the treatment of mental disease. But, on the other hand, we are not. Therefore, as the Law Member suggested, the term 'western medicine' should be interpellated in this definition.

MR. K. PADMANABHAN (*Chirayinkil I*): May I know from the Darbar Physician whether he is quite sure that there is no proper medicine in the Ayurveda system to cure mental disease?

MR. JAMES SIMPSON (*Darbar Physician*): I am not suggesting so much. I am suggesting that every Western degree-holder has a higher training in mental disease than an Ayurveda practitioner. Then again Sir, there are medical practitioners who do not hold any degree. They have been trained at Neyyoor and Nagercoil and even in the Trivandrum General Hospital some 25 years ago. They are also called medical officers. There are also many medical men of such standing who practise in Travancore. Are they to be recognised or not? If a person is entitled to be called a medical officer, he is equally entitled to be called a medical practitioner. I, therefore suggest that Government must have some say on the point. Something should be left to Government on that point alone. I think that is all I have to say.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha I*): If this matter would stand, as the House would decide, we may proceed to the other amendments.

DEPUTY PRESIDENT: Is the House of that opinion, that is, this definition may be considered to-morrow and in the meanwhile we may consider other clauses? Is that the view of the House?

The House agreed.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): That means that they must give some notice of amendment tomorrow at least by 11 O'clock.

DEPUTY PRESIDENT: As a special case, it would be enough if notice of amendment is delivered to the Secretary to-morrow before 11 O'clock.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): Notice of amendment on what?

DEPUTY PRESIDENT: If the amendment proposed by the Law Member is not conclusive, the others may send in their amendments which may come up for discussion on this question.

MR. K. R. ELENKATH (*Kalkulam I*): Does it refer only to this particular clause?

DEPUTY PRESIDENT: Yes, to sub-clause (8) *viz.*, the definition of 'Medical Practitioner'.

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MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): Am I to exercise my right of reply now or to-morrow?

DEPUTY PRESIDENT: I thought it was self-evident. If the whole thing is to be considered to-morrow, Mr. Krishna Pillai might as well have concluded that he has the right of reply to-morrow and need not have spent his energy in asking.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): If I am not given the opportunity to reply, my amendment, it is likely, may be thrown out, which I do not want to be done. It may also be withdrawn.

DEPUTY PRESIDENT: I do not think Mr. Krishna Pillai can withdraw the amendment. Only if the House agrees, he can do so. The understanding is, this will be considered to-morrow. And therefore Mr. Krishna Pillai need not have the chance of reply now.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): I would make a suggestion in view of the proposal to consider the definition of "Medical Practitioner" to-morrow. I submit, clause 7 also may be left for consideration along with clause 8, because clause 7 says;

"Medical officer means a gazetted officer of Our Government, and includes a medical practitioner declared by General or Special order of Our Government to be a Medical Officer for the purposes of this Regulation".

Therefore, before accepting sub-clause (7), we must be satisfied what that expression 'Medical Practitioner' there means and we shall be able to define that expression only to-morrow.

DEPUTY PRESIDENT: The point is, whatever be the qualification prescribed, the Government will nominate certain people as medical officers and certain others as medical practitioners. Clause 7 applies only to those who have been declared as medical officers.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha I*): In fact, the expression 'Medical Practitioners' will be a variable one, which has to be decided to-morrow.

DEPUTY PRESIDENT: Yes, that may be considered to-morrow and its value ascertained to-morrow.

So that the motion before the House is clause 2 sub-clauses (1), (2), (3), (4), (5), (6), (7), (9), (10), (11) and (12), shall form part of the Bill. The question is that clause 2 forms part of the Bill, except that in sub-clause (1) line 1, for the word "or", the word "and" shall be substituted.

The House agreed.

DEPUTY PRESIDENT: Clause 2 shall stand part of the Bill, subject to the reservation made with respect to sub-clause (8), to be considered to-morrow.

Clause 2, subject to the reservation made and with sub-clause (1) as amended, was put to vote and carried.

The clause was added to the Bill.

Clause 3.

Clause 3 was put to vote and carried.

The clause was added to the Bill.

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Clause 4.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): I beg to move that, in sub-clause (2) line 1, after the word *'relative'*, the words *practitioner or assistant''* be added.

Sir, the Bill as introduced has undergone some alteration in the Select Committee. All that my amendment seeks to do, is to restore the provision as it was in the original Bill. Personally, I am unable to see the justification for the amendment made by the Select Committee. I shall explain my position. Clause 4, as amended by the Select Committee, reads thus:

"(2) If either of the medical certificates is signed by any relative....., the petition shall state .....the exact manner in which the person signing ..... is related ....."

In the original Bill, the clause ran as follows:

"If either of the medical certificates is signed by any relative partner or assistant the petition shall state .... the person signing .... is related ....'.

While the Select Committee thought it fit to amend this clause they did not make any corresponding alteration in clause 2.

DEPUTY PRESIDENT: We are not concerned with the provisions in the original Bill and the alterations made by the Select Committee. We are now concerned only with the provisions in the Bill as revised by the Select Committe.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): I am only pointing out, Sir, that all that my present amendment seeks to do, is to restore the provision in the original Bill?

DEPUTY PRESIDENT: Independently of the possibility of the provision in the original Bill being restored, if your amendment is carried, we are now concerned only with the provision as settled by the Select Committee. You need not argue on the effect of your amendment.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): I beg your pardon, Sir. I was not addressing it as an argument in support of my amendment. I was only attempting to show how the provision would read when amended.

Further, Sir, there is a sanctity attached to the provision as it occurred in the original Bill; because, it is only an exact copy of the provision in the British Indian Act. And, that is what it would be, if my amendment is accepted.

All that the provision says is, that, when a petition is presented with two medical certificates, the petition shall contain particulars of the relationship subsisting between the persons who issue the certificates and the person who applies or the person for whom the application is made. Such relationship has to be expressly stated in the application; and the sort of relationship, to which the pointed attention of the court has to be drawn, is whether it is blood relationship or relationship as partner or assistant. It has to be stated whether the alleged lunatic is a blood relation of the medical practitioners who issue the certificates or whether they are related as partner or assistant.

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In other words, the idea is that the pointed attention of the court should be drawn the court must be able to see at a glance—to the fact whether the medical men who issue the certificates and the petitioner are interested in the alleged lunatic being declared a lunatic. A reading of the subsequent provisions makes it clear that the Magistrate when he is put in possession of the medical certificates, can immediately pass a reception order, and the lunatic can be immediately taken to the asylum. The Magistrate may, if he considers it necessary, call for further evidence; he may himself examine the lunatic or ask for further medical evidence. Such a procedure can be adopted by the Magistrate only if, on the face of the petition and the certificates, he is able to find out at a glance whether the medical practitioners who have issued the certificates, or the petitioner, are interested in any way in the alleged lunatic being declared a lunatic. As it is, the law says that the Magistrate shall be warned sufficiently early of the nature of the proceedings, whether they are collusive proceedings or whether the conduct of the parties is supported by *bona fides*. If it is the object of the law to warn the Magistrate about the interest that the medical men have in the alleged lunatic being declared a lunatic, it is as much necessary to state in the petition whether they are related as partners or assistants as to state whether they are blood relations of the alleged lunatic. Therefore, the petition must state also whether they are related as partners or as assistants. The purpose of the provision is to make it easy for the court to find out at a glance whether there is any room for suspecting the *bona fides* of the petitioner or of the medical men who have issued the certificates. This is especially so since the Magistrate is empowered to pass the reception order, immediately after receipt of the petition with the certificates.

Now, Sir, what the Select Committee has done is this. They have retained the provision insisting on the petition stating whether the medical men or the petitioner are blood relations of the alleged lunatic and have thereby recognised the purpose of the provision, *viz.*, that at a glance, the court must be able to find out the nature of the interest of the petitioner or the medical men in getting the reception order. But they have omitted the other provision insisting on the statement in the petition as to whether the petitioner or the medical men are not interested, in obtaining the reception order, otherwise than by blood relationship, for instance, as partner or assistant. It is that omission that my amendment seeks to supply. And, the British Indian Act as well as the original Bill contain the provision now sought to be made by my amendment.

To make clear the force of my amendment it is worth while to refer to section 16, where also the Select Committee have effected a change. These changes have a consequential defect. Section 16 says :

"*Explanation* 1—'Disqualified person' means ..... *partner* or *assistant*....."

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[Mr. Puthupalli S. Krishna Pillai.]

If section 4 need not provide for the relationship as partner or assistant, where is, I wonder, the necessity for such relationship being mentioned under section 16 ? Like the British Indian Act and the original Bill, section 16, even as settled by the Select Committee, provides for the relationship as partner or assistant being mentioned in the petition.

Further, the provision as settled by the Select Committee is also inconsistent with practicability ; because it is stated that the proceedings for a reception order shall be started by a medical certificate. That has to be done. Is it not necessary that, before reception order proceedings are started, the Magistrate must be cleared of all doubt or suspicion of the *bona fides* of the petitioner and the medical men issuing the certificates ? It is not a blood relation alone that may be interested in the reception order, a partner or assistant may also be so interested. The possibility is that the Magistrate would not start the proceedings at all if he has the slightest doubt or suspicion about the *bona fides* of the medical men. He has the discretion to call for further evidence if, looking into the petition, he considers that necessary before initiating the proceedings for the reception order. No doubt, the change made by the Select Committee has got the sanctity of finding a place in the English Act.

DEPUTY PRESIDENT : So, there is collision of sanctity ; the Select Committee has the sanctity of the English Act, whereas your amendment has the sanctity of the British Indian Act.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*) : But the English Act does not contain any provision like the present clause 4.

Here the British Indian Framer thought that that right need not be general, because the Magistrate is given the discretion, and that would be a sufficient safeguard. The British Indian Framer of the Regulation thought it fit to restrict the scope of medical certificates. However, the retention of clause 4 makes it necessary that if any relation exists that fact should also be intimated to the Magistrate before he begins to proceed. With these few words, Sir, I move this amendment.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : Sir, I oppose this amendment. The real question that arises on this amendment is, whether a partner or an assistant should be allowed to sign a medical certificate on the basis of which the Magistrate should pass a reception order. Mr. Krishna Pillai pointed out, originally the Bill stood as is proposed by his amendment. That is true. But the Select Committee carefully considered the whole matter and came to the conclusion that under no circumstances should an assistant or a partner be allowed to sign a certificate. They have given their reasons under clause 16, as follows :

"As a Magistrate is likely, ordinarily, to place much reliance on the medical certificates, we are of opinion that a special provision should be made that the certificates shall not be made by anybody

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likely to benefit by the confinement or detention of any person as a lunatic. We accordingly propose the above provision which is in line with the provision in the corresponding English Act." The disqualification list includes a partner, or an assistant. It includes also some relatives. Therefore a partner, an assistant, and some relatives are disqualified. Some relatives are not in the list and they are not disqualified; and if they sign a certificate they should declare how they are related to the petitioner. Therefore in section 16, sub-section (1) provision is made as follows, "……shall contain a declaration that the person who so makes and signs the certificate is not a disqualified person". The reasons given by the Select Committee are quite reasonable. That is in accordance with the law in England too. At the same time, in order that a person disqualified, shall not sign the certificate and pass it as a true certificate, he should state specifically that he is not a disqualified person. It seems to me that that is a very good safeguard against unreliable certificates being issued.

DEPUTY PRESIDENT: Mr. Krishna Pillai, do you press your motion?

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): In view of the explanation offered by the Law Member, the Select Committee which made the amendments had made a departure from the……

DEPUTY PREIDENT: Are you going to withdraw or to press your motion? You need not make a speech.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): Then I withdraw my motion.

The motion was, by leave, withdrawn.

Clause 4 was put to vote and passed and the clause was added to the Bill.

Clauses 5 to 15.

Clauses 5 to 15 were put to vote and passed and the clauses were added to the Bill.

Clause 16.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*) In view of the facts that I have withdrawn the 4th and 5th amendments I don't move this amendment.

Clause 16 was put to vote and passed and was added to the Bill.

Clauses 17 to 27.

Clauses 17 to 27 were put to vote and passed and the clauses were added to the Bill.

Clause 28.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): Sir, I beg leave to move that – sub-clause (2) of clause 28 be deleted.

This Act corresponds to the British Indian Act. But it finds a place there, because of the existence of another provision in the early portion of the Act. This is the provision;

> "If the person is detained under the order of any public authority, notice of the order of discharge shall be immediately communicated to such authority."

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[Mr. Puthupalli S. Krishna Pillai.]

Nowhere in this Regulation the expression, "Public Authority" is defined. But there is a provision in the British Indian Act. That clause has been omitted in our section. Our section deals purely with reception orders made by Magistrates on petitions or Police reports and reception orders made after inquisition. These are the three main contingencies contemplated in our Bill. There are other provisions in the British Indian Act enabling the public authorities to make reception orders and those sections have been omitted. The expression, "Public Authority," is not defined here. That will contemplate that there is a private authority exercising power and making reception orders. I am not able to see that there is any private authority to exercise these functions here. The retention of the word "public authority" will be misleading. In order to be consistent with the scheme of the Bill I thought it could be conveniently omitted.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): The order for confining a person on account of lunacy, under the Regulation, may be by a criminal court or by a civil court and these are public authorities. There is another contingency also in contemplation and it is that that is particularly referred to. That is section 70 which enacts as follows :—

> "Any officer in charge of the asylum may give effect to any order or warrant for the reception and detention of any lunatic made or issued by any court or authority beyond the limits of Travancore notified by Our Government in this behalf in Our Government Gazette from time to time."

In British India there is a provision that, if a lunatic has been declared by a foreign court, he may be detained in an asylum in British India on the authority of a foreign court or authority. In such cases, in Travancore too, a lunatic may be detained on the authority of a foreign court or authority or by the order of a court in the State. Mr. Krishna Pillai complained that the expression "public authority" is not defined in this Bill. He asks whether a private authority has power to order detention of a lunatic. If that be so, the word 'public' may be dropped and 'the' substituted. I have no objection to some course—

DEPUTY PRESIDENT: Would Mr. Krishna Pillai accept the suggestion?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): A word of explanation. If the word 'public' is omitted, that will be enough.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): The only objection is this. If the person is detained.....

DEPUTY PRESIDENT: Do you accept it or not?

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): I have no serious objection. If there is any other suggestion forthcoming, that may also be considered.

MR. A. THANU PILLAI (*Trivandrum-Rural*): I would suggest as follows :—

> "When such order is made a notice of the order of discharge shall be immediately communicated to the authority under whose order the person is detained."

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MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : I have no objection to accept it.

DEPUTY PRESIDENT : The Law Member accepted Mr. Thanu Pillai's suggestion. Then it may be taken down.

MR. A. THANU PILLAI (*Trivandrum—Rural*) : It is thus :—

"Notice of the order of discharge shall be immediately communicated to the authority under whose order the person is detained."

DEPUTY PRESIDENT : That suggestion is accepted by the Law Member and Mr. Puthupalli S. Krishna Pillai.

I put to the House that the amendment be passed.

The amendment was passed.

The question that clause 28, as amended, do stand part of the Bill, was then put to the vote of the House and carried.

The clause was added to the Bill.

Clause 29

The question that clause 29 do stand part of the Bill was then put to the vote of the House and carried.

The clause was added to the Bill.

Clauses 30 to 41,

The question that clauses 30 to 41 do stand part of the Bill was then put to the vote of the House and carried.

The clauses were added to the Bill.

Clause 42.

DEPUTY PRESIDENT : In clause 42 there is an amendment by Mr. S. Krishna Pillai.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*) : Sir, I beg to move that—in clause 42, in sub-clause I line 3, for the words 'person and estate of the lunatic' the words 'estate of the lunatic and if necessary his person' be substituted.

The object of the amendment is this. It appears that there is some confusion. The heading shows that the provisions deal with the powers of the court over the person and estate of the lunatic so found. This is dealt with in sections 41, 42, 43 and 44. A reading of section 44 will show that in all other cases, the District Court shall appoint a manager of the estate of the lunatic and may appoint a guardian of his person and in the preceding sections it will be seen that it is attempted to lay down the powers which shall be exercised by the court under certain distinct contingencies. Clause 42 is an important clause. If the estate of a lunatic so found, consists, in whole or in part, of land or any interest in land, the District Court may direct the Division Peishkar of the place to take charge of the person and estate of the lunatic. The Division Peishkar shall thereupon appoint a manager of the estate and may appoint a guardian of the person of the lunatic. Now if a lunatic possesses one cent of land, or happens to have an hypothecation deed in his name, say, for Rs. 10, the court has to act under section 42. It is bound to exercise it in such a way that it has to hand over both the person and the property together. The two have to go into the hands

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[Mr. Puthupalli S. Krishna Pillai.]

of the Peishkar. The Division Peishkar is bound to appoint a manager of the estate and may appoint a guardian of the person of the lunatic, *i. e.*, he may or may not appoint a guardian for the lunatic. So, if the Peishkar is a person of a humorous turn of mind he can keep the lunatic in his house. Suppose, Sir, the lunatic is not a dangerous lunatic and he happens to possess immovable property. The District Court hands him over with his property to the Peishkar. As the Peishkar is not bound to appoint a guardian, he is entitled to keep the lunatic in his house, just as a plaything for his children. The law should be so framed in such a manner that it leaves no room for any such possibility. There is another aspect also to be considered. The Peishkar's orders are revisable by Government under section 43. If the Peishkar appoints a guardian, it is open to Government to cancel the appointment and ask the Peishkar to keep the lunatic with him. This will be a sure weapon in the hands of Government for creating temporary vacancies amongst Peishkars in order that their own man may be provided for. When Government exercise their power under section 43 and ask the Peishkar to take care of the lunatic, the course of safety for the Peishkar is to take leave and the successor being the pet of the Government, can, after taking charge, get the order of Government revised. Not that it is certain to happen. We must contemplate all possible contingencies and try, as far as possible, to avoid them.

DEPUTY PRESIDENT: You will better finish your speech. I have no objection to wait 3 or 4 minutes more.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): Sir, I have very little to add. By this amendment I propose to avoid a possible absurdity. The fact that the British Indian Act contains the same provision is no excuse. This possibility may not have been brought to their notice.

MR. K. R. ELENKATH (*Kalkulam I*): I second it.

DEPUTY PRESIDENT: The House will now adjourn to meet again to-morrow at 11 A. M.

The House adjourned at 5-5 P. M.

K. MADHAVA KURUP,
Secretary to the Sri Mulam Assembly.

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